IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

W.A.No. 2823 of 2007

(AGAINST JUDGMENT IN WP(C) NO.14378/2006 DATED 6.11.2006)

APPELLANT/PETITIONER:

ARINGATH KELAN,
S/O. KUNHAPPA,
KANNADIPARAMBA,
CHELERI AMSOM DESOM,
P.O. CHELERI, KANNUR.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
LABOUR AND REHABILITATION DEPARTMENT,
TRIVANDRUM.

2. WELFARE FUND INSPECTOR,
KERALA TODDY WORKERS WELFARE FUND BOARD,
THALIKKAVU ROAD, KANNUR.

3. SRI.K.V.JOSEPH,
S/O. VARGHESE,
KILAKKODE VEEDU,
ERANJOLI, VADAKKUMBAD.

4. SMT.VADAVATHI INDIRA,
NARAYANI NILAYAM,
PATHIRIYAD, KELALUR,
MAMBRAM, KANNUR.

5. SMT. KALAT PONNAMBATH BINDU,
D/O. LAKSHMANAN,
KALPAKA NIVAS, DHARMADAM,
PALAYAD, KANNUR.

6. THE DISTRICT COLLECTOR,
KANNUR.

7. THE TAHSILDAR (REVENUE RECOVERY),
THALIPARAMBA, KANNUR.

R1, R6 & R7 BY GOVERNMENT PLEADER MR.M.P.SREEKRISHNAN
R2 BY STANDING COUNSEL MR.RENIL ANTO

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

W.A.No.2823 of 2007

Dated, this the 3rd day of December, 2007

JUDGMENT

H.L.Dattu, C.J.

The petitioner in W.P.(C) No.14378 of 2006, being aggrieved by the orders passed by the learned Single Judge dated 6th November, 2006 is before us in this writ appeal.

(2). In this appeal we will be referring to the parties as arrayed in the writ petition itself.

(3). In the writ petition filed, the petitioner had called in question Ext.P7 order passed by the State Government and the revenue recovery proceedings initiated by respondents 1 and 2.

(4). The brief facts are: Respondents 3 to 5 are the licensees for vending of toddy in Shop Nos. 5 and 6 of Thalassery Range. It appears that they had entrusted vending of toddy to the petitioner for the excise year 2000-2001. The petitioner after deducting the welfare fund contribution from the wages payable to the employees, had not deposited the same with the Welfare Fund Inspector. Therefore, a pre-assessment notice was issued by the Welfare Fund Inspector dated 2-8-2002, inter alia, calling upon the petitioner and the licensees namely respondents 3 to 5 to pay an amount of Rs. 1,48,630/- towards the welfare fund contribution of 19 employees.

(5). After the receipt of the pre-assessment notice, the petitioner had objected to the proposal made in the notice and it was his case that,

respondents 3 to 5 alone are the licensees and therefore, they are liable to pay the welfare fund contribution for the excise year 2000-2001 for running of toddy shops in Shop Nos.5 and 6 of Thalassery Range.

(6). In the enquiry held, the Welfare Fund Inspector has recorded the evidence of the petitioner, respondents 3 to 5 and the Secretary of the Thalassery Range Chethuthozhilali Union (C.I.T.U).

(7). The original licensee namely Mr.K.V.Joseph in his evidence has stated that during the excise year 2000-2001, the Shop Nos.5 and 6 were actually conducted by the petitioner and he is to give wages to the workers. The Secretary of the Thalassery Range Chethuthozhilali Union (C.I.T.U) in his evidence has stated that it is the petitioner who was conducting the actual business of toddy vending in Shop Nos. 5 and 6 and also had deducted 8% of the wages payable to the workers towards the contribution fund. Based on the evidence so recorded, the Welfare Fund Inspector has proceeded to pass order dated 10-10-2002, inter alia holding that the petitioner and respondents 3 to 5 are jointly and severally liable to pay the welfare fund contribution.

(8). Aggrieved by the said order passed by the Welfare Fund Inspector, the petitioner had approached the State Government. The State Government by its order dated 12-4-2006 has rejected the appeal so filed and has confirmed the orders passed by the Welfare Fund Inspector.

(9). Aggrieved by the said two orders and the revenue recovery proceedings initiated pursuant to those orders, the petitioner is before this Court in W.P.(C) No.14378 of 2006.

(10). The learned Single Judge, after considering the provisions of the Kerala Abkari Act and the Kerala Abkari Shops Disposal Rules and also the provisions of the Kerala Toddy Workers Welfare Fund Act, has come to the conclusion that the licensees had permitted the petitioner to conduct business of toddy in Shop Nos. 5 and 6 of Thalassery Range and therefore, the authorities under the Act are justified in fastening the liability both on the petitioner and respondents 3 to 5 who are the licensees under the provisions of the Kerala Abkari Act.

(11). The learned counsel appearing for the petitioner/appellant, contends before us that, at no point of time the petitioner had conducted business of vending toddy in Shop Nos.5 and 6 of Thalassery Range, and therefore, the learned Judge was not justified in confirming the orders passed by the State Government and Welfare Fund Inspector. In support of his contention, the learned counsel relies upon the observations made by the Apex Court in the case of ***Joseph Joseph V. State of Kerala (2002 (1) KLT 827 (SC).***

(12). The learned counsel appearing for the respondents justifies the impugned orders passed by the Welfare Fund Inspector and the State Government.

(13). In the case of ***Joseph Joseph V. State of Kerala (2002 (1) KLT 827 (SC)***, the Supreme Court has observed as under:

> *"A perusal of S.2 (c) shows that it refers to the person who employs any person, whether directly or through any other person or whether on behalf of himself or any other person, as employer. The employment by any person can be for himself or for any other person. Merely because the person is associated with the conduct*

of the business of an establishment or shop, it cannot be said that he had employed the workers on his own behalf. There may be cases where it can be shown that besides the owner any other person conducting the business of the said shop may employ workers on his own behalf and not on behalf of original owner. But in the absence of proof to the contrary, particularly in view of the statement of principal employer that he had employed the workers, the intermediary persons could not be held to be the employer of the workers who were employed for the conduct of the business in the shop covered under the Act. Law presupposes the conduct of a legal business and cannot be interpreted in a manner which frustrates the object of the Act and results in not only miscarriage of justice but violation of the statutory provision of law. If, under the Rules, the licensee was not authorised to lease out or sub-let the whole or any portion of the privilege or licence granted to him for conducting the Abkari business, holding the appellants as employer with respect to the licensee's shop would amount to facilitate the violation of the Kerala Abkari Shops Act, and the Rules framed thereunder. Such an interpretation is not called for as it is against the public policy. In any particular case, where the authorities find that besides the licensee any other person conducting the business in a licenced premises under the Abkari Act and the Rules framed there under is also liable to contribute to the fund under the Act, they are under the legal duty to assert and positively hold that such persons were the employers vis-a-vis the workers and that they were conducting the business either with the legal authority of the licensee or the licensing authority. The High Court has taken a general view of the matter without reference to the purpose and object of the Act and the law under which the licence to run the shop was granted. The impugned judgment is thus not sustainable."

(14). Keeping in view the provisions of the Act and the dicta of

the Apex Court, let us analyse the facts of the case.

(15). It is the case of respondents 3 to 5 before the Welfare Fund Inspector that Shop Nos. 5 and 6 of Thalassery Range was manned and managed by the petitioner alone. They have further stated that he had employed workers and he was regularly paying wages and was also deducting welfare fund contribution from the wages payable to his employees. The Secretary of the Thalassery Range Chethuthozhilali Union (C.I.T.U) who participated in the enquiry proceedings before the Welfare Fund Inspector has categorically stated that, it is the petitioner who was conducting the toddy business in Shop Nos. 5 and 6 of Thalassery Range. The Secretary has no prejudice against the petitioner. He is an independent witness. His evidence has been rightly taken note of by the Welfare Fund Inspector to come to the conclusion that it is the petitioner alone who was responsible for doing the business in Toddy Shop Nos.5 and 6 of Thalassery Range. His evidence is corroborated by the evidence of the licensee. All these facts would definitely indicate that it is the petitioner and the petitioner alone who was conducting the toddy shop business in the afore-said two shops.

(16). The Supreme Court in the case of ***Joseph Joseph V. State of Kerala (2002 (1) KLT 827 (SC)*** has observed, that, in any particular case, where the authorities find that besides the licensee any other person conducting the business in a licenced premises under the Abkari Act and the Rules framed is also liable to contribute to the fund under the Act, they are under the legal duty to assert and positively hold that such persons were the employers vis-a-vis the workers and they were conducting the business either with the legal authority of

the licensee or the licensing authority.

(17). In the instant case, as we have already noticed that it was the specific case of respondents 3 to 5 who are the original licensees under the Abkari Act and also the Secretary of the Thalassery Range Chethuthozhilali Union (C.I.T.U) that, with the legal authority granted to the petitioner by the original licensee, he was conducting the business. The authorities under the Welfare Fund Act after considering the entire oral evidence that has come on record came to the conclusion that it is the petitioner who was conducting toddy vending business in Shop Nos.5 and 6 of Thalassery Range with the permission granted by the original licensee. We do not see any perversity in the finding of the Welfare Fund Inspector.

(18). All these aspects of the matter is taken note of by the learned Single Judge before rejecting the writ petition filed by the petitioner. In our opinion, the learned Judge, while confirming the orders passed by the Welfare Fund Inspector and the State Government has not committed any error whatsoever, which would call for our interference. Accordingly, the writ appeal requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

MS